Public Review of a Forest Development Plan in the Salmon Arm Forest District

Complaint Investigation 000283

FPB/IRC/49

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Table of Contents

The Investigation **1**

Background 1

Discussion 2

1. Did the notice of opportunity to review and comment on the 1998 – 2003 SBFEP FDP comply with Code requirements? 2

2. Was the opportunity to review and comment on the 1998 – 2003 SBFEP FDP adequate? 2

Conclusions **3**

The Investigation

This complaint is about the opportunity for public review and comment for the 1998 – 2003 forest development plan (FDP) for the Small Business Forest Enterprise Program (SBFEP) of the Salmon Arm Forest District.

The complainant believes that public consultation was inadequate because he did not know that the Ministry of Forests planned to harvest 11 cutblocks in the Blind Bay area until May 2000, even though the cutblocks were approved as part of the 1998 FDP. In addition, the complainant believes that the newspaper advertisements for the public review of the FDP were inadequate because they misleadingly indicated that development was planned in the White Lake area, when in reality it was planned for the Blind Bay area.

The Board decided that the investigation would examine:

- whether or not the notice of the opportunity to review and comment on the 1998 FDP complied with the requirements of the *Forest Practices Code of British Columbia Act* and regulations (the Code); and
- whether or not the opportunity to review and comment on the FDP was adequate.

Background

The complainant takes water from Perris Creek under a domestic water licence. Perris Creek flows into Blind Bay, which is part of Shuswap Lake. In 1996, the complainant learned that the SBFEP planned some harvesting upslope from his home. He expressed concerns in writing to the Ministry of Forests and received a letter responding that harvesting was proposed in the Perris Creek watershed for sometime after 2001.

On April 7, 1998, the ministry proposed 12 cutblocks in the area as part of its 1998-2003 SBFEP FDP. Part of Perris Creek was within one of the proposed cutblocks (cutblock 7). The ministry did not receive any comments from the complainant during the review and comment period. The district manager approved the cutblocks on July 10, 1998.

On July 29, 1998, the complainant and a ministry employee looked at cutblock 7. The complainant was concerned about the impact of the cutblock on his water supply and the employee agreed to change the cutblock from a clearcut to a number of smaller cutting units.

On April 13, 1999, the ministry proposed its 1999 – 2004 SBFEP FDP. A modified version of cutblock 7, based on the field trip with the complainant, was shown as category A proposed. The ministry did not receive any comments from the complainant during the review and comment period. Cutblock 7 was approved on July 9, 1999.

The complainant claims that he did not know that 11 cutblocks were approved for harvest until May 2000, but he was aware of cutblock 7 because he viewed it in the field with the ministry employee.

None of the approved cutblocks had been harvested by July 2001.

Discussion

1. Did the notice of opportunity to review and comment on the 1998 – 2003 SBFEP FDP comply with Code requirements?

Section 39 of the *Forest Practices Code of British Columbia Act* (the Act) required a district manager to make an FDP available for review and comment in accordance with the regulations before he or she gives effect to the FDP. Section 2(1)(b) of the *Operational Planning Regulation* (OPR) required a district manager to publish a notice, in a form acceptable to the district manager, in the *BC Gazette* and in a newspaper, before giving effect to an FDP. Section 4(1) of the OPR required the district manager to provide opportunity for review and comment to persons interested or affected by operations under the FDP or amendment for a period of at least 60 days.[1] The Code does not specify what the notice should contain other than that the FDP is available for public review and comment.

The opportunity to review and comment on the FDP was advertised in early 1998 in the *BC Gazette* and several local newspapers in a form acceptable to the district manager. The 1998 – 2003 SBFEP FDP was available for review and comment between January 30 and March 31, 1998. The ministry continued to accept public input until at least April 15, 1998, after a public meeting advertised in the local newspaper in late March 1998, was held in Salmon Arm. The review and comment period was at least 60 days.

The notice of opportunity to review and comment on the 1998 – 2003 SBFEP FDP was presented in accordance with section 39 of the Act and sections 2(1)(b) and 4(1) of the OPR.

2. Was the opportunity to review and comment on the 1998 – 2003 SBFEP FDP adequate?

Section 4(4) of the OPR (now section 27(8)) states that an opportunity for review and comment provided to an interested or affected person will only be adequate if, in the opinion of the district manager, the opportunity is commensurate with the nature and extent of that person's interest in the area under the plan and any right that person may have to use the area under the plan.

The district manager considers that the public review and comment opportunity was adequate. The complainant said he did not remember seeing any newspaper advertisements concerning the FDP, but if he had he would not have suspected that Perris Creek would be affected because the ads only referred to the White Lake and Eagle Bay areas. The complainant correctly maintains that the cutblocks he is concerned about are closer to Blind Bay.

The ads referring to White Lake announced a public meeting at the end of the review and comment period. The ads used to meet Code requirements appeared at the beginning of the review and comment period and indicated that the FDP applied to the entire district, though no specific locations were mentioned. Although both ads were placed in the legal section of local newspapers, the public meeting ads were larger and considerably more noticeable.

A neighbour of the complainant did attend the 1998 public meeting at the White Lake hall. The neighbour told Board staff that he probably became aware of the open house through the

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[1] Since 1998 the OPR has changed so that section 2(1)(b) is now in a modified form as OPR section 25 and section 4(1) is now OPR section 27(1) and 27(3).

newspaper. Nevertheless, the Board recognizes that the reference to "White Lake/Eagle Bay area" was ambiguous and could reasonably have caused confusion.

The complainant stated that, in 1996, the Ministry of Forests requested road access through his property, which he agreed to on the condition that the ministry keep him informed of planned development. Ministry staff called the complainant in 1996 and 1997 to advise him of opportunities to attend nearby open houses for the SBFEP FDPs for those years. The complainant did not attend either open house. The ministry has no record of calling the complainant in 1998. It was reasonable for the complainant to expect that he would receive a call for the 1998 open house.

In the Board's view, the opportunity to review and comment on the 1998 SBFEP FDP was adequate. However, it would have been preferable for the Ministry of Forests to contact the complainant directly about the public review and comment opportunity, although this is not specifically a Code requirement.

Conclusions

The ministry complied with the Code in notifying the public about the opportunity to review and comment on the 1998 – 2003 SBFEP FDP.

The opportunity to review and comment on the FDP was adequate. However, in light of the complainant's expressed interest in the Perris Creek area, it would have been preferable, despite not being a Code requirement, for the complainant to receive direct notice of the opportunity to review the 1998 SBFEP FDP.

The Board notes that the district has taken significant steps since 1998 to improve notices and the public review and comment opportunity. It is now district policy to contact water licensees, including the complainant, by letter to advise them of planned development and review and comment opportunities. In addition, the advertisements for the 2001 SBFEP FDP show marked improvement over the 1998 ads in that they are more visible and understandable. Open houses are also held in more communities, and are more accessible.